

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

KG MINING (BALD MOUNTAIN) INC,
Plaintiff,
v.
JOSEPH MAKI,
Defendant.

Case No. 3:20-cv-00656-MMD-CLB
ORDER

I. SUMMARY

Plaintiff KG Mining, Inc. ("Bald Mountain") sued Defendant Joseph Maki for breach of contract. (ECF No. 1 at 3.) Before the Court is Bald Mountain's motion to dismiss (ECF No. 21 ("Motion")) Maki's counterclaims under Federal Rule of Civil Procedure 12(b)(6).¹ (ECF No. 21 at 1.) Because Maki has failed to plead facially plausible counterclaims, and as further explained below, the Court will grant the Motion and will grant Maki leave to amend some of his counterclaims.

II. BACKGROUND

The following facts are adapted from the pleadings. Bald Mountain is a mining company. (ECF No. 1 at 1.) Maki was offered a position with Bald Mountain for an alleged annual base salary of \$92,000, along with a signing bonus of \$12,196.52 and relocation benefits of \$69,588.17. (ECF Nos. 1 at 2, 18 at 9.) Maki allegedly signed an agreement on September 17, 2019, and September 18, 2019, that he would return the signing bonus and relocation benefits, totaling \$81,784.69, if he left Bald Mountain within one year. (ECF No. 1 at 2.) Maki allegedly began working for Bald Mountain around October 7, 2019. (ECF No. 18 at 9.) He contends that Bald Mountain eventually

¹Maki filed an opposition to the Motion (ECF Nos. 22, 23), and Bald Mountain filed a reply (ECF No. 24). It appears that ECF No. 22 and ECF No. 23 are duplicate documents.

1 terminated him around May 14, 2020. (*Id.* at 10.) However, Bald Mountain alleges in its
2 Complaint that Maki resigned and denies that Maki was terminated. (ECF Nos. 1 at 2,
3 21 at 8). Bald Mountain sent Maki a letter requesting repayment of the signing bonus
4 and relocation expenses on August 14, 2020, because Maki resigned before completing
5 one year of employment. (ECF No. 1 at 3.) Bald Mountain sent Maki another formal
6 demand letter on September 21, 2020. (*Id.*) According to Bald Mountain, Maki has not
7 repaid the \$81,784.69. (*Id.*)

8 Bald Mountain subsequently filed this lawsuit against Maki, alleging breach of
9 contract. (*Id.*) Maki filed an answer and eleven counterclaims against Bald Mountain for
10 (1) luring an employee under false pretenses under NRS § 613.010; (2) negligent hiring,
11 training, supervision, and retention; (3) violation of the Fair Labor Standards Act
12 (“FLSA”) for failing to pay minimum and overtime wages; (4) retaliation in violation of
13 FLSA; (5) fraud and fraud in the inducement; (6) tortious discharge; (7) conversion; (8)
14 unlawful lending practices; (9) failure to pay wages under NRS § 608; (10) failure to pay
15 wages upon termination of employment under NRS §§ 608.020-.050, 608.140 and the
16 Nevada Constitution; and (11) unjust enrichment. (ECF No. 18 at 10-21.) Bald Mountain
17 now seeks dismissal of the counterclaims. (ECF No. 21.)

18 **III. LEGAL STANDARD**

19 The standard on a motion to dismiss a counterclaim under Rule 12(b)(6) is the
20 same as on a motion to dismiss a plaintiff’s complaint. A court may dismiss a plaintiff’s
21 complaint for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P.
22 12(b)(6). A properly pleaded complaint must provide “a short and plain statement of the
23 claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp.*
24 *v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual
25 allegations, it demands more than “labels and conclusions” or a “formulaic recitation of
26 the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing
27 *Twombly*, 550 U.S. at 555). “Factual allegations must be enough to rise above the
28 speculative level.” *Twombly*, 550 U.S. at 555. Thus, to survive a motion to dismiss, a

1 complaint must contain sufficient factual matter to “state a claim to relief that is plausible
2 on its face.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570).

3 In *Iqbal*, the Supreme Court of the United States clarified the two-step approach
4 district courts are to apply when considering motions to dismiss. First, a district court
5 must accept as true all well-pleaded factual allegations in the complaint; however, legal
6 conclusions are not entitled to the assumption of truth. See *Iqbal*, 556 U.S. at 678. Mere
7 recitals of the elements of a cause of action, supported only by conclusory statements,
8 do not suffice. See *id.* Second, a district court must consider whether the factual
9 allegations in the complaint allege a plausible claim for relief. See *id.* at 679. A claim is
10 facially plausible when the plaintiff’s complaint alleges facts that allow a court to draw a
11 reasonable inference that the defendant is liable for the alleged misconduct. See *id.* at
12 678.

13 Where the complaint does not permit the Court to infer more than the mere
14 possibility of misconduct, the complaint has “alleged—but it has not show[n]—that the
15 pleader is entitled to relief.” *Id.* at 679 (alteration in original) (quotation marks and
16 citation omitted). That is insufficient. When the claims in a complaint have not crossed
17 the line from conceivable to plausible, the complaint must be dismissed. See *Twombly*,
18 550 U.S. at 570. Dismissal of a complaint without leave to amend is only proper when it
19 is clear the complaint could not be saved by any amendment. *Ariz. Students’ Ass’n v.*
20 *Ariz. Bd. of Regents*, 824 F.3d 858, 871 (9th Cir. 2016); see also Fed. R. Civ. P.
21 15(a)(2) (instructing district courts to “freely give leave” to amend).

22 **IV. DISCUSSION**

23 Bald Mountain argues that none of Maki’s counterclaims are plausibly pled, and
24 that the Court should dismiss them all. (ECF No. 21 at 13.) The Court agrees, but finds
25 that some counterclaims may be cured by amendment. The Court first addresses Maki’s
26 counterclaims that may be cured by amendment, which includes his fraud counterclaims
27 (counts I, V), negligent hiring/supervision/training/retention (count II), retaliation (count
28 IV), tortious discharge (count VI), unpaid wages (counts III, IX, X), unjust enrichment

(count XI), and conversion (count VII). The Court then examines Maki's counterclaim that may not be cured by amendment, which includes his unlawful lending practices (count VIII) counterclaim. Because Maki has failed to plead facially plausible counterclaims, the Court will grant Defendant's Motion.

A. Fraud (Counts I, V)

To start, Maki failed to meet the heightened pleading standard for fraud claims under Federal Rule of Civil Procedure 9(b). Bald Mountain argues that dismissal is proper because Maki failed to identify the hours he was not compensated for, the specific misrepresentations Bald Mountain made to Maki, and the specific parties that made the misrepresentations. (ECF No. 21 at 4, 7.) Maki counters that he did provide the time, place, specific content, and identities of the parties in his counterclaims. (ECF No. 23 at 2-3). The Court agrees with Bald Mountain.

Rule 9(b) provides that when a party alleges fraud, the party must "state with particularity the circumstances constituting fraud." The party must include the "the who, what, when, where, and how of the misconduct charged." *Becerra v. Dr. Pepper/Seven Up, Inc.*, 945 F.3d 1225, 1228 (9th Cir. 2019) (citation omitted); *see also Depot, Inc. v. Caring for Montanans, Inc.*, 915 F.3d 643, 668 (9th Cir. 2019) (noting that "the complaint must include an account of the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentations") (citations and quotation marks omitted).

Accepting Maki's allegations as true, Maki appears to allege that Bald Mountain represented that the company would properly pay him, but Bald Mountain did not uphold those promises. (ECF No. 18 at 15.) However, Maki failed to provide further details regarding the specific hours or type of work he was *not* compensated for, or Bald Mountain's specific misrepresentations regarding the type and amount of work Maki *would* be compensated for. (*Id.* at 10-11, 14-15.) *See Becerra*, 945 F.3d at 1228; *Depot*, 915 F.3d at 668. It is also unclear *who* actually made these statements—whether it was

1 a particular agent or employee of Bald Mountain's or language from the provisions
2 within Maki's employment agreement. See *Becerra*, 945 F.3d at 1228.

3 Moreover, it is unclear *where* or *when* the alleged misconduct occurred, as
4 required by Rule 9(b). See *Becerra*, 945 F.3d at 1228; *Depot*, 915 F.3d at 668. In his
5 response, Maki attempts to clarify that the timing of the misconduct was "at the
6 formation of the employment agreement/offer and during the course and scope of
7 employment until termination on or about May 14, 2020, and for causes of action post-
8 termination." (ECF No. 23 at 2-3.) However, this was not clear or specified in his initial
9 counterclaims, where Maki only alleged that Bald Mountain convinced him to accept the
10 job under false representations—without additional details about whether the
11 statements were made before, during, or after he signed the agreement. (ECF No. 18 at
12 10, 15.) Maki therefore failed to meet the heightened pleading standard under Rule 9(b),
13 and the Court dismisses his fraud counterclaims (counts I and V) without prejudice, with
14 leave to amend.

15 **B. Negligent Hiring, Training, Supervision, and Retention (Count II),**
16 **Retaliation (Count IV), and Tortious Discharge (Count VI)**

17 Next, Maki fails to plead facially plausible counterclaims for negligent
18 hiring/training/supervision/retention, retaliation, and tortious discharge. Bald Mountain
19 argues that each counterclaim fails to plead the requisite factual information that would
20 support it. (ECF No. 21 at 5, 7, 8-9.) The Court agrees.

21 First, Maki vaguely alleges that Bald Mountain had a duty not to hire individuals
22 with a "propensity towards committing unlawful acts" and to adequately train, supervise,
23 and retain its employees. (ECF No. 18 at 11.) He then alleges that Bald Mountain
24 violated this duty by "fail[ing] to supervise, train and hire appropriate personnel which
25 resulted in damages." (*Id.* at 11-12). Maki's bare recitals of the elements for negligence,
26 supported only by conclusory statements, are insufficient to defeat a motion to dismiss.
27 See *Iqbal*, 556 U.S. at 678. For instance, Maki fails to specify the actions by Bald
28 Mountain's employees or agents that injured him. (ECF No. 18 at 11-12.) Maki does not

1 provide any details regarding *how* Bald Mountain failed to supervise or train its
 2 employees. (*Id.*) Also, for a claim like negligent hiring, Maki does not include any factual
 3 allegations that Bald Mountain failed to conduct a reasonable background check or
 4 hired an employee even though Bald Mountain knew or should have known of the
 5 employee's "dangerous propensities." (*Id.*) See *Burnett v. C.B.A. Sec. Serv.*, 820 P.2d
 6 750, 752 (Nev. 1991) (citation omitted); *Hall v. SSF, Inc.*, 930 P.2d 94, 98 (Nev. 1996)
 7 (citation omitted). The Court therefore dismisses Maki's negligent
 8 hiring/training/supervision/retention counterclaim (count II) without prejudice, with leave
 9 to amend, because Maki's conclusory statements do not rise above the speculative
 10 level or cross the line from conceivable to plausible. See *Iqbal*, 556 U.S. at 678;
 11 *Twombly*, 550 U.S. at 570.

12 Second, Maki argues that Bald Mountain retaliated against him by filing this
 13 lawsuit, in violation of FLSA. (ECF No. 18 at 14.) However, Maki does not include any
 14 other details to support his allegation—aside from the single fact² that Bald Mountain
 15 filed this lawsuit. (*Id.*) Thus, Maki has not provided sufficient factual matter to "state a
 16 claim to relief that is plausible on its face" for retaliation under FLSA. See *Iqbal*, 556
 17 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). The Court therefore dismisses Maki's
 18 retaliation counterclaim, with leave to amend, because Maki has only alleged, but has
 19 not *shown*, that he is entitled to relief. See *Iqbal*, 556 U.S. at 678-79 (citation omitted).

20 Third, Maki argues that Bald Mountain "constructively discharged" him for
 21 reasons that violate Nevada's public policy, which protects employees from employer
 22 retaliation. (ECF No. 18 at 15.) A tortious constructive discharge claim requires proof
 23 that "(1) the employee's resignation was induced by action and conditions that are

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 25 ²In his response, Maki attempts to supplement his retaliation argument by adding
 26 that he "complained and demanded wages and wage records" from Bald Mountain, but
 27 "such requests have been denied or otherwise unanswered." (ECF No. 23 at 4.)
 28 However, it is unclear how this particular allegation is relevant to Maki's contention that
 Bald Mountain retaliated against him by filing this lawsuit. (ECF No. 18 at 14.)
 Moreover, it is unclear whether Maki made these record requests before or after the
 lawsuit was filed. (ECF No. 23 at 4.) Thus, this additional detail from Maki's response
 does not change the Court's conclusion that Maki's retaliation counterclaim should be
 dismissed without prejudice.

1 violative of public policy; (2) a reasonable person in the employee's position at the time
2 of resignation would have also resigned because of the aggravated and intolerable
3 employment actions and conditions; (3) the employer had actual or constructive
4 knowledge of the intolerable actions and conditions and their impact on the employee;
5 and (4) the situation could have been remedied.” *Dillard Dep’t Stores, Inc. v. Beckwith*,
6 989 P.2d 882, 885 (Nev. 1999) (citations omitted).

7 The Court finds that Maki has not sufficiently pled his tortious discharge
8 counterclaim. The only support Maki provides for his counterclaim is that Bald Mountain
9 made him execute unlawful agreements as a condition of his employment while “hiding
10 the true intent of such documents,” and suggests that Bald Mountain retaliated against
11 him. (ECF No. 18 at 15-16.) However, Maki failed to specify *how* Bald Mountain hid its
12 true intent, *what* Bald Mountain’s true intentions were, or clarify the connection between
13 Bald Mountain’s concealment of its true intentions and the company’s retaliation against
14 him—which is the basis for his tortious discharge counterclaim. (*Id.*)

15 Moreover, Maki failed to provide sufficient facts to support the elements for
16 tortious discharge. For instance, Maki failed to include details about the retaliatory or
17 aggravated actions that would lead a reasonable person in Maki’s position to resign;
18 that Bald Mountain had actual and constructive knowledge of the intolerable
19 employment conditions and their impact on Maki; and that the situation could have been
20 remedied. *See Dillard*, 989 P.2d at 885. The Court therefore dismisses Maki’s tortious
21 discharge counterclaim (count VI) without prejudice and with leave to amend, because
22 Maki failed to provide sufficient facts to state a facially plausibly counterclaim. *See Iqbal*,
23 556 U.S. at 678.

24 **C. Unpaid Wages (Counts III, IX, X) and Unjust Enrichment (Count XI)**

25 The Court next addresses Maki’s unpaid wages counterclaims under FLSA, the
26 Nevada statutes, and the Nevada Constitution, and Maki’s unjust enrichment
27 counterclaim. Because, as above, the Court finds these counterclaims lack the requisite
28 facts, the Court will dismiss them and will grant Maki leave to amend.

1 To start, Maki argues that Bald Mountain failed to compensate him “for minimum
2 wage and/or overtime for each hour worked” and mileage expenses, in violation of
3 FLSA. (ECF No. 18 at 12-13.) However, Maki fails to include any details regarding the
4 specific trips he was not compensated for or the amount he is owed for mileage
5 expenses. (*Id.* at 13.) Second, Maki fails to allege that he worked more than 40 hours in
6 a workweek for his unpaid overtime claim. (*Id.* at 12-13.) The Ninth Circuit has explicitly
7 held that “to survive a motion to dismiss, [the party] asserting a FLSA claim to overtime
8 payments must allege that [he] worked more than 40 hours in a given workweek without
9 being compensated for the overtime hours worked during that workweek.” *Landers v.*
10 *Quality Commc’ns, Inc.*, 771 F.3d 638, 644-45 (9th Cir. 2014) (citations omitted); see
11 also *Boyack v. Regis Corp.*, 812 F. App’x 428, 430-31 (9th Cir. 2020).

12 Here, Maki merely alleges that he was not paid overtime and refers the Court to
13 his redacted bank records but fails to provide any explanation for the bank records, or
14 allege facts showing that he was entitled to and denied minimum wage for a given
15 workweek, as required by *Landers*. (ECF Nos. 18 at 13, 29.) See 771 F.3d at 645.
16 Because Maki fails to provide sufficient factual allegations to state a facially plausible
17 counterclaim (count III) for unpaid wages under FLSA, the Court dismisses the
18 counterclaim without prejudice and with leave to amend. See *Iqbal*, 556 U.S. at 678.

19 Maki’s state-law unpaid wages counterclaims (counts IX and X) are also
20 deficient. Maki fails to allege the specific hours he was not paid, the amount of wages
21 owed, or that he worked more than 40 hours in a scheduled workweek or more than 8
22 hours in a workday—all facts necessary to resolve his Nevada state-law claims. See
23 NRS §§ 608.016, 686.018; *Iqbal*, 556 U.S. at 678. Maki further alleges that Bald
24 Mountain maintains “a policy and/or practice of not paying its employees for time it
25 deems non-compensable,” but fails to provide details about the particular activities/labor
26 Bald Mountain considers compensable versus non-compensable under its policy. (ECF
27 No. 18 at 19.) These allegations are conclusory. The Court therefore dismisses counts
28 IX and X without prejudice and with leave to amend.

Finally, Maki's unjust enrichment counterclaim must also be dismissed. Maki alleges that he worked "numerous hours without proper compensation, to the benefit and enrichment" of Bald Mountain and that Bald Mountain is going to be further enriched by "forcing [Maki] to pay [back] \$81,784.69.00." (*Id.* at 21.) Under Nevada law, unjust enrichment occurs when "the plaintiff confers a benefit on the defendant, the defendant appreciates such benefit, and there is acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof." *Korte Constr. Co. v. State on Relation of Bd. of Regents of Nev. Sys. of Higher Educ.*, 492 P.3d 540, 543 (Nev. 2021) (citation omitted). Maki seems to suggest that the benefit or advantage conferred to Bald Mountain was his labor, and that Bald Mountain did not pay him for his labor, despite benefiting from Maki's "time as an employee." (ECF No. 18 at 21.) See *Korte*, 492 P.3d at 543. However, as explained above, Maki fails to identify which hours and activities he was not compensated for, the labor he was not compensated for, or the amount of compensation is he owed. (*Id.*) Because Maki fails to allege sufficient facts, the Court dismisses Maki's unjust enrichment counterclaim (count XI) without prejudice and with leave to amend. See *Iqbal*, 556 U.S. at 678.

D. Conversion (Count VII)

Maki argues that, by demanding repayment of the \$81,784.69, Bald Mountain seeks to unlawfully deduct from his salary of \$92,000.³ (ECF Nos. 18 at 16-17, 23 at 4.) Bald Mountain contends that the counterclaim should be dismissed because the company allegedly paid Maki the \$81,784.69, in addition to his base salary, and never deducted the amount from his base salary. (ECF Nos. 21 at 9-10, 24 at 4.) The Court agrees that dismissal is proper.

Under Nevada law, conversion is "a distinct act of dominion wrongfully exerted over personal property in denial of, or inconsistent with, title or rights therein or in

³The Court notes that Maki's arguments are, at times, difficult to follow and require the Court to construe them as stated herein.

derogation, exclusion or defiance of such rights.” *Edwards v. Emperor’s Garden Rest.*, 130 P.3d 1280, 1287 (Nev. 2006) (citation omitted). “[L]iability for conversion is predicated upon general intent, which does not require wrongful intent and is not excused by care, good faith, or lack of knowledge.” *Winchell v. Schiff*, 193 P.3d 946, 950 (Nev. 2008) (citation and quotation marks omitted). “[C]onversion generally is limited to those severe, major, and important interferences with the right to control personal property that justify requiring the actor to pay the property’s full value.” *Golden Rd. Motor Inn, Inc. v. Islam*, 376 P.3d 151, 160 (Nev. 2016).

Maki appears to argue that Bald Mountain is liable for conversion by “failing to pay [due] wages” and attempting to “deduct” the \$81,784.69 from his salary. (ECF Nos. 18 at 16, 23 at 4.) However, as stated above, it is unclear which wages Bald Mountain failed to pay or that Maki is owed. Moreover, Maki admits that Bald Mountain promised him an annual base salary of \$92,000. (ECF No. 18 at 9.) However, it is unclear whether, under the agreement, the \$81,784.69 was *taken out* of his \$92,000 base salary or paid to Maki *in addition* to his annual base salary.⁴ (*Id.* at 16-17.) Notably, Maki does not allege that the \$81,784.69 was *a part* of the \$92,000 base salary. (ECF Nos. 18 at 16-17, 23 at 4.) Maki, instead, repeatedly refers to the \$81,784.69 as an “unlawful loan” without any further elaboration or clarification. (ECF No. 18 at 17.) Maki’s fragmentary and conclusory allegations do not yield a facially plausible counterclaim for conversion. *See Iqbal*, 556 U.S. at 678. The Court therefore dismisses Maki’s conversion counterclaim (count VII) without prejudice, and with leave to amend, so Maki can clarify the aforementioned issues.

E. Unlawful Lending Practices (Count VIII)

Finally, Maki characterizes the \$81,784.69 as a “loan” from Bald Mountain and alleges that Bald Mountain violated NRS § 675 and the Truth in Lending Act (TILA) by

⁴Bald Mountain has maintained throughout this lawsuit that repayment of the \$81,784.69 would not be deducted from Maki’s \$92,000 base salary and would, instead, be a reimbursement of the signing bonus and relocation benefits, paid to Maki *in addition* to his base salary. (ECF Nos. 1 at 2, 24 at 4.)

1 dealing with loans without proper licensing, failing to define the loan's purpose to Maki,
2 and forcing Maki and other employees into loan agreements as a condition of their
3 employment. (ECF No. 18 at 17-18.) Bald Mountain denies that the \$81,784.69 was a
4 loan and argues that dismissal is proper because (1) NRS § 675 does not provide for a
5 private civil cause of action, and (2) Maki's TILA counterclaim is barred by the statute of
6 limitations. (ECF No. 21 at 10-11.) The Court agrees with Bald Mountain.

7 Maki fails to state a claim for unlawful lending. Setting aside the conclusory
8 allegations that his relocation bonus was a "loan," penalties for unlicensed dealing in
9 loans are limited to criminal charges and an administrative fee imposed by the Nevada
10 Commissioner. See NRS §§ 675.470, 675.490. The statute does not authorize a private
11 civil right of action, and Maki therefore cannot bring this counterclaim. Next, 15 U.S.C. §
12 1640(e) clearly states that any civil action under TILA "may be brought in any United
13 States district court, or in any other court of competent jurisdiction, within one year from
14 the date of the occurrence of the violation." The statute of limitations for TILA "begins to
15 run 'at the time the loan documents were signed,'" which Maki admits was September
16 17, 2019. (ECF No. 18 at 2.) *Townsend v. Wells Fargo Bank, N.A.*, 831 F. App'x 338,
17 339 (9th Cir. 2020) (citing *Meyer v. Ameriquest Mortg., Co.*, 342 F.3d 899, 902 (9th Cir.
18 2003)). Thus, Maki's TILA counterclaim was filed well past the one-year statute of
19 limitations and Maki fails to allege sufficient facts to demonstrate that equitable tolling
20 applies. See *Townsend*, 831 F. App'x at 339. Because Maki's TILA counterclaim is
21 barred by the statute of limitations and NRS § 675 does not allow for a private civil
22 cause of action, the Court dismisses Maki's unlawful lending counterclaim (count VIII)
23 with prejudice, as amendment would be futile.

24 **V. CONCLUSION**

25 The Court notes that the parties made several arguments and cited to several
26 cases not discussed above. The Court has reviewed these arguments and cases and
27 determines that they do not warrant discussion as they do not affect the outcome of the
28 issues before the Court.


1 It is therefore ordered that Plaintiff Bald Mountain's Motion to Dismiss (ECF No.
2 21) Defendant Joseph Maki's counterclaims (ECF No. 18) is granted.

3 It is further ordered Maki's fraud (counts I, V), negligent hiring, training,
4 supervision, and retention (count II), unpaid wages (counts III, IX, X), retaliation (count
5 IV), tortious discharge (count VI), unjust enrichment (count XI), and conversion (count
6 VII) counterclaims are dismissed without prejudice, and with leave to amend.

7 It is further ordered that Maki's unlawful lending practices (count VIII)
8 counterclaim is dismissed with prejudice.

9 It is further ordered that, if Maki decides to file an amended counterclaim—to the
10 extent he is able to cure the deficiencies discussed herein—he must do so within 30
11 days of the date of entry of this order. Maki's failure to file an amended counterclaim
12 within 30 days will result in dismissal of the remaining part of his counterclaims with
13 prejudice.

14 DATED THIS 4th Day of March 2022.

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17 MIRANDA M. DU
18 CHIEF UNITED STATES DISTRICT JUDGE
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